

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

R&B – Khammam District - Sanction of Rs. 5,59,352/- towards payment of decretal charges as per the Hon'ble High Court common Judgment, dt. 14-9-2009 in CMA.No.888/2003 & CRP.No.2713/2004 – Accorded – Orders – Issued.

TRANSPORT, ROADS AND BUILDINGS (ROADS.III) DEPARTMENT

G.O.Rt.No. 961

Dated:1st October, 2011.

Read:-

From the Engineer-in-Chief (R&B) SR, Hyd.,
Lr.No.18615/EE(T)/DEE5/AEE4/2010, dt. 17-3-2011.
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ORDER:-

The Engineer-in-Chief (R&B), SR, Hyd., has stated that Sri D. Narasimha Rao, Contractor, Aswaraopet, Sathupally (M), Khammam district has entered into an agreement with SE (R&B) Warangal bearing No. 9//78-79, dt. 4-6-1978 for Rs. 6,16,732-00 to execute the work of "SR to Bhadrachalam – Chandrupatla road providng BT wearing coat and seal coat from Km. 45/0 to 54/0". The site was handed over to the Contractor on 21-6-1978 with an agreement to complete the work within one year i.e., by 26-6-1979 stipulating the schedule of work as 25% in first three months, 50% by six months, 75% by nine months and 100% by the end of the year. For slow progress of work, a fine of RS. 500/- and Rs. 1,000/- were imposed by the E.E., vide letter, dt. 5.3.1979 and 5.6.1979 respectively. The value of the work executed by the Contractor was only Rs. 13,234/- as against the contract value of Rs. 6,16,732/- by the agreed date of completion i.e., by 20-06-1979. Considering the request of the Contractor in his application, dt. 31-10-1979, extension of time was granted upto 31-5-1980 with a fine of Rs. 2,000/-. But, the contractor has executed further work of Rs. 72,981/- only in the extended period upto 31-5-1980. For his slow progress of work, a fine of Rs. 1,000/- was imposed. The contractor has again requested for further extension of time upto 31-3-1981. In view of completion of work, even though the reasons put forth by the Contractor were not convincing, the S.E. (R&B) Warangal vide proceedings, dt. 8-9-1980 has granted extension of time upto 31-3-1981 duly imposing a further fine of Rs. 2,000/-. Inspite of above two extensions, the value of work executed by the Contractor was Rs. 1,79,293/- only as against the agreement contract value of Rs. 6,16,732/- within the period of 2 years and 9 months. Considering his slow progress of work, the Contract was terminated under Clause 60 (a) of P.S. to APDSS duly forfeiting the EMD, FSD and withheld amounts including the value of the work done was not paid. The balance work would be done at the cost and risk of the Contractor and the same was ratified by the SE (R&B) Warangal, vide Memo., dt. 1-4-1981. After termination of the contract, disputes were raised by the Contractor in his application, dt. 7-5-1981.

2) The Contractor has filed the Petition under Clause 73 of PS to APDSS on 15-4-1982. among the Arbitrators viz., (i) Chief Engineer (I & P Deptt) Medium Irrigation Hyderabad (ii) Dy. Secretary to Government, Finance Department, Hyderabad (iii) Director of Accounts, Sree Rama Sagar Project, Karimnagar against Superintending Engineer (R&B) Warangal and Executive Engineer (R&B) Bhadrachalam. Rebuttal statement was submitted to the panel of Arbitrators vide SE (R&B) Warangal vide Lr.No.1455/TS/S4/SEW/76, dt.14.06.1982.

3) The contractor issued a notice on 29.09.1982 to the panel of Arbitrators stating that he is taking further necessary action to appoint a fresh and sole Arbitrator for adjudication on the disputes arising out of the contract, since they failed to proceed with the reference and made the award within four months from

22.04.1982 as per the terms of the Agreement and Arbitration Act, 1940. The contractor filed O.P.No.116/83 for appointment of a sole Arbitrator and the 1st Addl. Judge, City Civil Court, Hyderabad in their Judgement dated 12.04.1984 dismissed the petition with directions to approach the Arbitrators by way of separate claim petition within a month from the date of this order and if the Arbitrators fail to proceed with the Arbitration he can have his own remedy.

4) The CE (Medium Irrigation) Hyderabad and one of the panel of Arbitrators issued proceedings No.DCE-3/OT.M2/JE.1/29930/82, dt.28.03.1985 for extension of time upto 30.06.1985 for passing the award.

5) The advocate of the contractor in his letter dated 23.04.1985 addressed the CE (Medium Irrigation) Hyderabad that his Client filed a CRP.2934/1984 in the Hon'ble High Court against the Judgement in O.P.116/83 of the 1st Addl. Judge, City Civil Court, Hyderabad. The Honourable High Court was pleased to admit the said C.R.P. on 30.11.1984 and notices were issued to the Government and the SE (R&B) Warangal, as well as the Hon'ble High Court seized of the matter and the Arbitrators could not proceed with the Arbitration proceedings. The Hon'ble High Court appointed Sri M.Krishna Rao, Retired Judge, A.P. High Court as sole Arbitrator by its Judgement dated:30.07.1987. The sole Arbitrator passed award on 08.06.1988. The contractor filed O.S.1132/88 on the file of the First Additional Judge, City Civil Court, Hyderabad to make the award Rule of the Court and the Department also contested the award of sole Arbitrator in O.P.No.426 of 1988. The first Additional Judge, City Civil Court Hyderabad in two Judgements on the same date i.e., dated 24.02.1992 has appointed Sri K.Hanumantha Rao, Retired Chief Engineer, I & CAD., as sole Arbitrator in O.S. No.1132/88 as the previous sole Arbitrator passed away by that date and set aside the award dated:08.06.88 of the sole Arbitrator (Sri K.Krishna Rao, Retired Judge) in OP No.426/88.

6) The sole Arbitrator passed award on 11.09.95 awarding a sum of Rs.1,53,835/-. The Contractor filed O.S. No.1612/95 on the file of VII Addl. Judge City Civil Court, Hyderabad for making the award rule of the Court and the Department also filed O.OP.37/96 on the file of VII Addl. Judge, City Civil Court, Hyderabad for setting aside the award. By separate order dated:18.04.2002, the VII Senior Civil Judge, City Civil Court, Hyderabad made the award rule of the Court in O.S. No.1612/95 and dismissed the O.P.37/96 refusing to set aside the award. The Department has filed affidavit viz., C.R.P.No.59124/2002 in O.S.No.1612/95 and CMS No.59122/2002 in O.P.No.37/96 in the Hon'ble High Court of A.P. Hyderabad questioning the decree and Judgement in O.S. No.1612/95. Mean while the contractor has filed E.P.82/2002 on the file of the VII Senior Civil Judge for execution of the decree and sought for attachment of the moveable properties in the office of the Secretary TR&B.

7) In the Department affidavit on the file of Hon'ble High Court, it was prayed that the Hon'ble Court may be pleased to stay all further proceedings in O.S.No.1612/95 on the file of the VII Senior Civil Judge,. City Civil Court, Hyderabad including execution proceedings and pass such other order or orders as the Hon'ble Court may deem fit and proper in the Circumstances of the case. Meanwhile, the Hon'ble High Court delivered Judgement dated, 14.09.2009, while confirming the award and the orders of the lower court, were pleased to reduce the rate of interest from 18% to 9% per annum for the balance 50% of the amount which remained unpaid and lying with the Government vide Hon'ble High Court Judgement in CMA No.888 of 2003 and CRP No.2173 of 2004.

8) Further the EE, Bhadrachalam has addressed the Government Pleader for Arbitration, High Court buildings Hyderabad for Legal opinion as to file SLP before the Supreme Court against the Common Judgement in CMA No.888/2003 and CRP No.2713/2004 vide ENC(R&B) Roads, Hyd., letter No.AB/A2/R&B Din.Bcm/446 dt.26.08.2010.

9) The Government Pleader for Arbitration, High Court Buildings Hyderabad has given his opinion vide letter No.Opn.No.2010/TR/ARBN dated:07.10.2010 in which he opined that they are not fit cases for filing appeal before the Supreme Court. The rate of interest considerably reduced and there are no merits to challenge the arbitrator's award and advised to satisfy the award by paying the rest of half of the award amount. Therefore, the Engineer-in-Chief (R&B) SR, Hyd., has requested to sanction Rs.5,59,352/- (Five Lakhs fifty nine thousand three hundred and fifty two only) under Head of Account "3054 R&B – 03 SH-MH 337 Road works SH-State Highways – 272 Maintenance" for depositing as per the Judgement of Hon'ble High Court in respect of the above case.

10) Government after careful examination of the matter hereby accord sanction of Rs. 5,59,352/- (Five Lakhs fifty nine thousand three hundred and fifty two only) towards payment of decretal charges as per the Hon'ble High Court common Judgment, dt. 14-9-2009 in CMA.No.888/2003 & CRP.No.2713/2004.

11) The amount sanctioned in Para (10) above shall be debited to the Head of Account "3054 Roads & Bridges – 03 State Highways - MH 337 Road works - SH(04) – Highway works – 270- Minor Works – 272 – Maintenance (charged)" and shall initially be met by way of an advance from Contingency Fund, orders regarding which will be issued separately by Finance (BG.I) Department.

12) The Engineer-in-Chief (R&B) SR, Hyd., shall take necessary action accordingly.

13) This order issues with the concurrence of Finance (Expr.PW) Dept., vide their U.O.No. 23944/868/Expr.PW/A2/11, dt. 19-9-2011.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

S.P. SINGH
PRINCIPAL SECRETARY TO GOVERNMENT

To

The Engineer-in-Chief (R&B) State Roads, Hyderabad

Copy to

The Executive Engineer (R&B) Bhadrachalam, Khammam District.

The Finance (Expr.PW) Deptt./Finance(BG)Deptt.,

The Accountant General, A.P.Hyderabad

The Pay and Accounts Officer, Hyderabad

The D.T.O., Khammam dist.

The Director of Works Accounts, Hyd.

The Director of Treasuries & Accounts, A.P., Hyd.

SF/SC

// FORWARDED :: BY ORDER //

SECTION OFFICER